

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KWANG CHOL JOY,	)	Case No. SACV 17-1195-JLS (JPR)
	)	
Petitioner,	)	ORDER ACCEPTING FINDINGS AND
	)	RECOMMENDATIONS OF U.S.
v.	)	MAGISTRATE JUDGE
	)	
CRAIG KOENIG, Acting Warden,	)	
	)	
Respondent.	)	

---

The Court has reviewed the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that judgment be entered denying the Petition and dismissing this action with prejudice. On May 18, 2020, Petitioner filed Objections to the R. & R., in which he mostly simply repeats arguments from his Petition and Traverse.

For instance, Petitioner continues to argue that "jury selection error" deprived him of a fair trial. (Objs. at 9.) He does not object to the Magistrate Judge's finding that habeas relief is not warranted on his claim that the trial court employed

1 an improper voir dire procedure. (See R. & R. at 29-31.) Rather,  
2 he contends that in rejecting his alternative argument that he was  
3 deprived of his constitutional right to a "petit jury that is as  
4 near an approximation of the ideal cross-section of the community  
5 as the process of random draw permits" (Pet. at 25), the Magistrate  
6 Judge incorrectly stated that defense counsel had not challenged  
7 the jury pool on that basis. (Objs. at 9). But although counsel  
8 moved to dismiss the jury pool because it was "no longer  
9 representative of the community" given how voir dire had unfolded  
10 (Pet., Ex. 1 at 4), he never argued, as the Magistrate Judge  
11 recognized (see R. & R. at 32), that the procedure  
12 unconstitutionally produced an "all Caucasian" jury pool or jury  
13 (Pet. at 25). The record does not reflect the racial composition  
14 of either, and Petitioner has not submitted any evidence on that  
15 score, as the Magistrate Judge also recognized. (See R. & R. at  
16 32.) Thus, she correctly found that Petitioner had failed to make  
17 a prima facie showing that any protected group was not adequately  
18 represented in the jury pool or was disproportionately excluded as  
19 a result of voir dire. (See id. at 31-33.)

20 Petitioner also continues to maintain that the prosecution  
21 failed to disclose favorable evidence to the defense. (Objs. at 5-  
22 7.) To start, the Magistrate Judge correctly refused to consider  
23 Petitioner's unexhausted claim, improperly raised for the first  
24 time in an unauthorized addendum to the Traverse, that the  
25 prosecution found and failed to turn over Ramos's missing cell  
26 phone. (See R. & R. at 33 n.8.) Petitioner's attempt to press  
27 that claim in his objections (see Objs. at 5-6) fails for the same  
28 reasons. Moreover, he has not shown that any of the evidence the

1 prosecution purportedly failed to disclose would have been  
2 favorable to his defense or that an evidentiary hearing might so  
3 establish. His conclusory assertion that the allegedly suppressed  
4 evidence must have been "favorable" (id. at 6) does not satisfy his  
5 burden.<sup>1</sup>

6 Petitioner's other objections are similarly conclusory. For  
7 instance, he asserts that the Magistrate Judge improperly rejected  
8 his ineffective-assistance-of-counsel claim, arguing that if  
9 counsel had investigated Ramos's allegedly missing phone records  
10 the results "would have been in [his] favor." (Id. at 3.) But he  
11 provides no basis for that conclusion. Likewise, although he  
12 repeats that counsel was ineffective for not calling an expert to  
13 contradict a prosecution witness's testimony that chemicals found  
14 in Ramos's blood were produced postmortem (id. at 5), there is no  
15 reason to believe any expert would have so testified, and, as the  
16 Magistrate Judge found, evidence that Ramos was poisoned would only  
17 have further inculpated Petitioner (see R. & R. at 57).<sup>2</sup> Nor is  
18 there any reason to believe that additional analysis of blood found  
19 on Ramos's pajamas would have been exculpatory. The DNA analyst  
20 who compared the blood to samples of Ramos's and Petitioner's DNA  
21 testified that it was consistent with Ramos's and ruled out  
22 Petitioner as its source. (See Lodged Doc. 2, 2 Rep.'s Tr. at 366,

---

23  
24 <sup>1</sup> Petitioner contends that the Court should liberally construe  
25 his pleadings on account of his pro se status. (Objs. at 2.) But  
26 his burden to establish entitlement to federal habeas relief is not  
27 lessened because he represents himself.

28 <sup>2</sup> Contrary to Petitioner's assertion (see Objs. at 4), the  
Magistrate Judge correctly noted that his counsel did call an  
expert witness – the crime-lab pathologist who performed Ramos's  
autopsy and who was not called as a witness by the prosecution (see  
Lodged Doc. 2, 2 Rep.'s Tr. at 444, 454).

1 368, 372-73.) Petitioner's insistence that the blood was not  
2 Ramos's (Objs. at 4) is and was, as the Magistrate Judge recognized  
3 (see R. & R. at 55 n.15), based on a misstatement by the prosecutor  
4 that was promptly corrected. Finally, Petitioner refers to Senate  
5 Bill 1437 (see Objs. at 10), but that law, which amended  
6 California's felony-murder rule and went into effect after  
7 Petitioner's conviction became final, has no relevance to this  
8 case.

9 Having reviewed de novo those portions of the R. & R. to which  
10 Petitioner objects, the Court agrees with and accepts the findings  
11 and recommendations of the Magistrate Judge. IT THEREFORE IS  
12 ORDERED that judgment be entered denying the Petition and  
13 dismissing this action with prejudice.

14  
15  
16 DATED: September 2, 2020



JOSEPHINE L. STATON  
U.S. DISTRICT JUDGE